

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY VINCENT McCLASH and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Jacksonville, FL

*Docket No. 99-1917; Submitted on the Record;
Issued September 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant has established that he sustained a ratable hearing loss for which he has received a schedule award; and (2) whether the Office of Workers' Compensation Programs applied the correct date of injury when determining appellant's award.

On August 27, 1998 appellant, then a 43-year-old engine repair worker, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that he sustained bilateral hearing loss in the course of his federal employment. He stated that he first became aware of his illness on July 27, 1998. On the reverse of the form, the employing establishment indicated that appellant had not stopped work. Medical and factual records included in the record included test results from periodic audiograms performed by the employing establishment between January 17, 1990 and July 28, 1998 and indicated that appellant was exposed to loud noise at work.

By letter dated November 24, 1998, the Office referred appellant to Dr. Michael Loper, a Board-certified otolaryngologist, for otologic evaluation and audiometric testing.

Dr. Loper performed an otologic evaluation of appellant and audiometric testing was conducted on his behalf on December 8, 1998. Testing at frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear -- 15, 20, 20 and 20 decibels; left ear -- 25, 20, 20 and 45 decibels. The audiogram results noted a calibration date of January 21, 1998.

In his report, Dr. Loper noted that appellant had evidence of moderate high frequency sensorineural hearing loss in the left ear, and a mild high frequency hearing loss in the right ear, which he opined was related to appellant's occupational history. Dr. Loper stated that appellant should use hearing protection devices during exposure to high intensity noise, as well as continue to have annual hearing evaluations.

The Office accepted the claim for bilateral sensorineural hearing loss. Appellant thereafter filed a claim for a schedule award.¹

In a report dated December 15, 1998, an Office medical adviser found a six percent binaural loss of hearing. However, he applied the test results of another individual, whose audiological reports were inadvertently made a part of this record.

In a decision dated April 9, 1999, the Office granted appellant a schedule award for a 6 percent binaural loss of hearing, for 12 weeks of compensation between December 8, 1998 and March 1, 1999.

The Board has duly reviewed the record and concludes that this case is not in posture for decision.

The Office has a responsibility to have an Office medical adviser review and express a rationalized opinion based on medical reports and audiograms submitted on behalf of appellant, regarding a schedule award for a hearing loss.²

The record contains the results of an otologic examination performed by Dr. Loper, and the audiometric examination performed on his behalf, dated December 28, 1998. While these medical reports were part of the record prior to the decision in this case, there is no indication that Dr. Loper's reports were evaluated by an appropriate medical expert before the Office. In fact, the Office medical adviser reviewed medical reports of another claimant, as shown by a comparison of the testing results provided by Dr. Loper with those recorded on the Office's form report.

On remand, the Office should have a medical adviser review the proper evidence and express an opinion on whether appellant has a compensable loss of hearing under the Office's standards.³ Following such review, the Office should issue a *de novo* decision.

¹ Appellant filed a second claim for a schedule award on April 1, 1999; however, this form was not signed on the reverse by appellant's supervisor.

² *William Russell*, 30 ECAB 376.

³ For a discussion of these standards, see *Richard Beggs*, 28 ECAB 387.

The April 9, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
September 20, 2000

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member